

- (1) What is the nature and extent of claimant's injury and disability, if any?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

(1) The Appeals Board finds the claimant has proven by a preponderance of the credible evidence that he suffered a forty-five percent (45%) permanent partial impairment of function to the body as a whole as a result of injuries suffered while employed with respondent.

Claimant, a forty-year old, seventeen-year employee at Beech Aircraft, has worked skilled manual labor his entire life. On August 14, 1990, while working on a crew box, claimant slipped causing his leg to twist. He immediately experienced a pop in his right knee. After reporting the injury to his supervisor, claimant was referred to First Aid, then to the company doctor and ultimately to Dr. Duane Murphy, a board-certified orthopedic surgeon. Claimant underwent two surgeries by Dr. Murphy and, still experiencing problems, was referred by Dr. Murphy to Dr. Charles W. Pence. Claimant then underwent two surgeries with Dr. Pence, involving arthroscopic examination of the knee and trimming of torn meniscus followed by surgery on the posterior joint capsule involving a lengthening of the tendons in order to help straighten out the knee. The four surgeries were less than successful and claimant continues to use either crutches, a walker or some type of walking assistance at all times. Subsequent to the surgeries, claimant was returned to work with the respondent in an accommodated position and he continues in that capacity.

While on crutches, claimant began developing problems in his low back. This was reported to Dr. Murphy and to Dr. Pence. These problems with claimant's low back continued with claimant indicating stooping and bending puts pressure on his low back and his knee and ambulating on crutches for any distance causes low back pain. Claimant is restricted to lifting twenty to twenty-five (20-25) pounds, is permanently restricted to bench-type work only, and is unable to walk without a walking aide.

Dr. Pence opined that claimant suffered a sixty percent (60%) permanent impairment of function to the lower extremity and denies any relationship between claimant's leg problems and his ongoing back problems. He does agree that using crutches and suffering an impaired gait would cause some increased back symptoms but denies an increase in the functional impairment to claimant's back as a result of the knee injury. Dr. Pence admits claimant discussed back pain the first time he had the opportunity to examine claimant. The doctor did not examine claimant's back and gives no opinion related to his back problems other than denying a relationship between the knee and the back. Dr. Pence admitted walking with a limp could cause low back discomfort. He felt claimant was being truthful and not exaggerating his symptoms.

Claimant was examined by Dr. Ernest Schlachter on November 24, 1992. Dr. Schlachter opined claimant had suffered an eighty-five percent (85%) permanent partial impairment of function to the right lower extremity which converts to a thirty percent (30%) impairment to the whole body and added an additional fifteen percent (15%) permanent partial impairment of function to the body due to the lumbar spine problems. Combined, they equate to a forty-five percent (45%) permanent partial impairment of function to the body as a whole. He sees the lumbar spine as a permanent aggravation, superimposed over claimant's pre-existing spinal problems which included a spinal fusion. He felt claimant's limp combined with the fusion would create additional back problems. He also opined that the back problems are a natural and probable consequence of the knee.

Claimant, in testifying regarding his ongoing back problems, discussed a specific incident wherein he was attempting to climb into his car while wearing a cast on his leg. At that time, claimant experienced a sudden onset of pain with radiculopathy into his buttocks. Dr. Schlachter felt this incident would constitute an aggravation of his condition and felt it a natural and probable consequence of the original injury.

K.S.A. 44-501(a) states in part:

“In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends.”

K.S.A. 44-508(g) defines burden of proof as follows:

“Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.”

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has a responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212 (1991).

When a primary injury under the Workers Compensation Act arises out of and in the course of a worker's employment, every natural consequence that flows from that injury is compensable if it is a direct and natural result of the primary injury. Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977).

Dr. Pence opined that claimant's back injury did not occur as a result of his leg injury but agreed that being on crutches, walking with a limp and having the limitations experienced by claimant to his knee would cause aggravation to his back. Dr. Pence felt that this aggravation would be temporary.

Dr. Schlachter, on the other hand, felt that claimant's knee condition, with the limitations therefrom, would permanently aggravate claimant's pre-existing back condition.

On January 31, 1993, Administrative Law Judge John D. Clark referred claimant to Dr. Lawrence Blaty for an independent medical examination. Dr. Blaty, after examining claimant and reviewing his medical history, opined claimant had developed his sacroiliac joint problem as a result of the imbalance and altered gait experienced by claimant secondary to his altered right knee function.

The Appeals Board finds the medical testimony of Dr. Schlachter, coupled with that of Dr. Blaty, is more persuasive and credible and feel that claimant's ongoing problems are a natural and probable consequence of the knee injury with claimant having suffered an additional permanent functional impairment to the back as a result thereof.

Neither Dr. Blaty nor Dr. Pence expressed an opinion regarding claimant's functional impairment to his back. Only Dr. Schlachter assessed a functional impairment to claimant as a result of his ongoing back symptomatology. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

K.S.A. 1992 Supp. 44-510e(a) states in part:

"There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

Claimant, having returned to work at a comparable wage with the respondent in an accommodated position, has not proven entitlement to work disability. As such, claimant is limited to his functional impairment.

K.S.A. 1992 Supp. 44-510e(a) states in part:

"Functional impairment means the extent, expressed as percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence."

Having only the functional impairment of Dr. Schlachter to address both claimant's knee and back problems, the Appeals Board finds the medical records and testimony of Dr. Schlachter to be competent medical evidence. As such, claimant is found to be entitled to a forty-five percent (45%) permanent partial impairment of function to the body as a whole as a result of injuries suffered while employed for respondent.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated May 26, 1994, should be and is affirmed in all respects and an award of compensation is herein entered in favor of the claimant, Gary Iverson, and against the respondent, Beech Aircraft Corporation, a qualified self insured, and the Kansas Workers Compensation Fund.

Claimant is entitled to 90.71 weeks temporary total disability compensation at the rate of \$278.00 per week totalling \$25,217.38, followed by 324.29 weeks permanent partial general body functional impairment at \$181.09 per week totalling \$58,725.67 for a 45% permanent partial general body functional impairment, making a total award of \$83,943.05.

As of September 19, 1994, claimant is entitled to 90.71 weeks temporary total disability compensation at the rate of \$278.00 per week totalling \$25,217.38, followed by 123.29 weeks permanent partial general body functional impairment at the rate of \$181.09 per week totalling \$22,326.59 for a sum of \$47,543.97 due and owing which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance of \$36,399.09 shall be paid at the rate of \$181.09 per week for 201 weeks until fully paid or until further order of the Director.

Claimant is entitled to future medical upon proper application to and approval by the Director of Workers Compensation.

Claimant is entitled to unauthorized medical up to \$350.00 upon presentation of an itemized statement.

Claimant's contract of employment with his attorney is approved subject to the provisions of K.S.A. 44-536.

Fees and expenses of the administration of the Kansas Workers Compensation Act are assessed against the respondent, a qualified self insured, and the Kansas Workers Compensation Fund with the Workers Compensation Fund reimbursing to the respondent forty percent (40%) of all costs per the stipulation of the parties to be paid as follows:

Barber & Associates	
Transcript of Regular Hearing	\$244.55
Deposition of Ernest R. Schlachter, M.D.	\$262.40
Deposition of Charles W. Pence, M.D.	\$135.60

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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John D. Clark, Administrative Law Judge  
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